

Federal Emergency Management Agency

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certified mail, return receipt requested, or delivered by hand to the debtor identifying the debt and advising that the full amount due should be paid by a specified date, not less than 30 days from the date of mailing or the hand delivery. If the debtor is other than a State or local government or an agency of the United States, the initial demand notice shall also advise the debtor that interest, calculated at rates provided by 31 U.S.C. 3717(a), shall be assessed if the debt is not paid in full by the due date. Interest shall be charged on the outstanding balance due at the rate prescribed by the Secretary of the Treasury in accordance with 31 U.S.C. 3717(a), beginning on the date that the first notice was mailed to the debtor. The debtor shall also be advised that if any portion of the debt remains unpaid for 90 days after the due date, without a repayment schedule satisfactory to the Agency being arranged, then additional penalties, as described in 31 U.S.C. 3717(e)(2), of 6 percent per year shall be charged on the unpaid balance of principal and interest.

(b) *Subsequent demands.* If the debt is not paid by the due date or if a repayment program acceptable to the ACO, has not been arranged with the debtor, then an initial demand shall be made followed by two progressively stronger written demands at not more than 30-day intervals, will be made unless a response to the initial or subsequent demands indicates that further demands would be futile and that the debtor's response does not require rebuttal.

(c) *Debts arising from contracts executed on or before October 25, 1982.* If the claim arises from a contract executed before October 25, 1982, then the initial and subsequent demands shall mention nothing about the imposition of penalties or interest, prior to rendering of judgment by a court of competent jurisdiction.

(d) *Waiver of subsequent written demands.* If there is valid reason, the sending of second and third demand letters may be waived. Such reasons may include, but are not be limited to,

statute of limitations being about to run.

[49 FR 38267, Sept. 28, 1984, as amended at 53 FR 47211, Nov. 22, 1988; 57 FR 54715, Nov. 20, 1992]

§ 11.43 Collection from non-Government entities by administrative offset.

(a) *General.* The Agency Collections Officer may effectuate collection of debts owed by persons or entities, other than Federal agencies or State or local governments, by means of offsets against monies due from the United States under provisions of 31 U.S.C. 3716 and the procedures set forth below. The procedures, prescribed by this subsection, shall not be used if the debtor has executed a written agreement, satisfactory to the ACO, for the payment of the debt so long as the debtor adheres to the provisions of the agreement. Before utilizing the procedures of this section, the ACO, or his designee, shall examine the debt to see whether the likelihood of collecting such a debt and the best interests of the United States justify the use of administrative offset. If the debt is over 6 years old but is not 10 years old, the ACO shall examine the debt and decide whether utilizing these procedures is cost effective. Further, administrative offset procedures shall not be used on debts more than 10 years after the Government's right to collect the debt first accrued unless facts material to the Government's right to collect the debt were not known and could not have been known by the officials of the Government who were charged with responsibility to discover and collect the debt.

(b) *Written notice.* After the ACO or his designee has examined the debt under procedures set forth in paragraph (a) of this section, a notice shall be sent by certified mail, return receipt requested, to the debtor advising him of:

(1) Nature and amount of the debt determined by the Agency to be due, and of intention to collect by administrative offset,

(2) Rights available under this section,

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(3) Opportunity to inspect and copy the records relating to the debt,

(4) Opportunity for review within the Agency with respect to the debt, and

(5) Opportunity to enter into an agreement with the ACO with respect to the debt. Such agreement may include voluntary but nonrevocable withholding of monies due from the United States to the debtor.

(c) *Review within the Agency.* The debtor may request, within fifteen calendar days after receipt of the written notice specified in paragraph (b) of this section, review within the Agency as to the existence or amount of the debt or terms of repayment. The review shall be conducted by a member of the staff of the Office of General Counsel not involved in collection of debts under the Agency program which gave rise to the debt. The staff member, with the concurrence of the ACO, may determine that no debt is due, the amount of the debts should be reduced, that terms of repayment should be set, or that the demanded amount should be paid in full. The staff member may negotiate with the debtor concerning a written agreement for the repayment of the debt. However, such agreement shall be subject to approval by the ACO.

(d) If no written agreement is executed, if the debtor does not request review within the Agency, or if the review within the Agency determines that a debt is due, then administrative offset against monies payable by the United States shall be effectuated in accordance with appropriate regulations. Efforts shall be made to coordinate offset collections with other agencies, including use of the Army Holdup List. However, if a statute either prohibits or explicitly provides for collection through administrative offset of the debt or the type of debt involved then the provisions of that statute rather than the provisions of this section shall be used for such offset.

(e) If the debtor has a judgment against the United States, then notice shall be provided to the General Accounting Office for offset in accordance with 31 U.S.C. 3728.

(f) The procedures described in this section do not apply to collecting a debt by taking offsets against Federal income taxes that would otherwise be

paid to the debtor. (See §§ 11.61 through 11.65 of this subpart below.)

[49 FR 38267, Sept. 28, 1984, as amended at 57 FR 54715, Nov. 20, 1992]

§ 11.44 Collection of debts from Federal agencies or States or units of general local government by common law offset.

(a) Debts owed by Federal Agencies, States, or units of general local government may be collected by offset in accordance with principles of common law. See *U.S. v. Munsey Trust Co.*, 332 U.S. 234 (1947). Offset may also be taken against States and units of general local government under provisions of 44 CFR 13.52(a)(1). Before taking such an involuntary offset against such debtors, the ACO or the DCO must notify such debtors as to:

(1) Nature and origin of the debt.

(2) Amount owed.

(3) FEMA's intent to collect interest at rates equivalent to those paid by the U.S. Government to borrow money on the open market, unless statute, regulation or agreement specifies another interest rate.

(4) Right of the debtor to inspect and copy records relating to the debt. However, FEMA may, in its discretion, utilize exemptions available under the Freedom of Information Act (5 U.S.C. 552(B)).

(5) Name, business address and telephone number of the official having cognizance over the debt.

(b) Prior to instituting involuntary offset against such debtors, DCO's must obtain approval of the ACO.

[53 FR 47211, Nov. 22, 1988, as amended at 57 FR 54715, Nov. 20, 1992]

§ 11.45 Collection by salary offset.

(a) *General.* Where an individual is an employee of the Federal Government or a member of the Armed Forces or a reserve component of the Armed Forces or is receiving retired or retainer pay for service as a Federal employee and where the individual is indebted to the United States and where the individual fails to satisfy his indebtedness voluntarily after the Agency has made demands in accordance with § 11.42 of this part, the ACO may institute collection action by salary or pay offset procedures in accordance